KAMALUL ANNUAR ABDUL RAHMAN A

v.

FIRST TAZ MONEY BROKERS SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR B
ABDUL WAHAB PATAIL J
[CIVIL NO: D4 (S6)-22-1316-2002]
18 AUGUST 2006

CIVIL PROCEDURE: *Action - Damages - Claim for damages for wrongful dismissal - Plaintiff dismissed by defendant as chief executive officer of company - Right to sue for wrongful dismissal - Whether plaintiff estopped from filing action in view of consent judgment handed down - Whether plaintiff obliged to make complaint under s. 20 Industrial Relations Act 1967 - Fung Keong Rubber Manufacturing (M) Sdn Bhd v. Lee Eng Kiat & Ors - Whether plaintiff restricted from filing civil suit* C D

The claim by the plaintiff was for damages for wrongful dismissal of the plaintiff as chief executive officer. By a circular resolution on 16 July 1997, the defendant purported to accept a resignation by the plaintiff as a director of the defendant. The plaintiff lodged a police report on 24 July 1997 with regard to the undated purported letter of resignation. At a meeting on 1 August 1997, a resolution was passed that the plaintiff, with his verbal consent, take leave of absence as CEO and Director with full pay and benefits until an independent inquiry and/or police investigation is completed. By a letter dated 6 February 1998, the plaintiff was informed that pursuant to a board of director's meeting on 11 August 1997, his benefits were restricted pending the outcome of police investigations. Subsequently by a letter dated 20 February 1998, the defendant informed the plaintiff that he was dismissed. The plaintiff disputed this dismissal and demanded reinstatement and restoration of benefits. On 28 February 2002, the parties entered into a consent judgment which provided that the plaintiff should have no further or other claims save and except for the enforcement of the consent judgment and the plaintiff's claim for damages in respect of the alleged wrongful dismissal as CEO. This action seeking damages for wrongful dismissal was filed on 8 November 2002. The questions that arose were (i) whether the plaintiff was estopped from filing this action E F G H I

in view of the consent judgment; (ii) whether plaintiff was obliged to make a complaint under s. 20 of the Industrial Relations Act 1967 ('the Act')

Held (judgment for the plaintiff):

(1) In view of the specific reservation of the right to sue for damages for wrongful dismissal in cl. 4(b) of the consent judgment, the plaintiff was not estopped from commencing this action. The consent judgment referred to 'damages' for alleged wrongful dismissal was not confined to general damages and did not, therefore, exclude special damages. (para 9)

(2) When a worker feels that he has been dismissed without just cause, s. 20 of the Act provides that he may make representations in writing to the director general. Since s. 20 is, as held by *Fung Keong Rubber Manufacturing (M) Sdn Bhd v. Lee Eng Kiat & Ors*, an alternative remedy, it does not operate to restrict and require the plaintiff to proceed only under s. 20. The plaintiff was not required to have first made representations in writing to the director general, and since there was no obligation, the plaintiff was not in any way restricted from filing this civil suit. (para 11)

(3) Although the defendant could, under the terms of the letter of appointment, have terminated the plaintiff's appointment by giving three months' notice, by 1 August 1997, there was a further term agreed between the parties with the effect of in part superceding cl. 3 of the letter of appointment, in that he would remain as chief operating officer and director, albeit on leave of absence, until an independent inquiry and/or police investigation was completed. The first alternative was fully within the control of the defendant, who, however, did not take any action. Police investigation was outside the control of either party. The result was that the plaintiff clearly remained as chief operating officer and director until the consent judgment of 28 August 2002, which left open and preserved the right of the plaintiff to claim damages in respect of alleged wrongful dismissal. (paras 15 & 16)

(4) The termination of the plaintiff's employment came into effect when he accepted the termination by filing this civil suit in November 2002. For simplicity, the termination was deemed to have been accepted at the end of October 2002. The court was of the view that six months would be a reasonable period

from the time he accepted the termination. Thus, the court granted judgment for the plaintiff as prayed with damages equivalent to six months' salary. (paras 17, 18 & 19)

Case(s) referred to:
Fung Keong Rubber Manufacturing (M) Sdn Bhd v. Lee Eng Kiat & Ors [1981] 1 MLJ 238 ***(refd)***
Manggai v. Government of Sarawak [1970] 2 MLJ 41 ***(refd)***

Legislation referred to:
Companies Act 1965, s. 181
Industrial Relations Act 1967, s. 20

For the plaintiff - Karen Lai (Sean Yeow & CS Mong with her); M/s Lee Hishammuddin
For the defendant - David Samuel (Peter Jayasuria, S Selvarajah, T Nayagam & DS Prasad with him); M/s Peter Jayasuria & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Wahab Patail J:

[1] The claim by the plaintiff is for damages for wrongful dismissal of the plaintiff by the defendant as Chief Executive Officer. He was employed in that capacity from 1993 until his purported dismissal on 20 February 1998. From 1996 until his dismissal, he was also a Director of the defendant.

[2] By a circular resolution on 16 July 1997, the defendant purported to accept a resignation by the plaintiff as a Director of the defendant. The plaintiff lodged a police report on 24 July 1997 with regard to the undated purported letter of resignation. At a meeting on 1 August 1997, a resolution was passed that the plaintiff, with his verbal consent, take leave of absence as CEO and Director with full pay and benefits until an independent inquiry and/or police investigation is completed.

[3] But he did not receive the full benefits.

[4] By a letter 21 January 1998, he requested an explanation why benefits he was entitled to was being withheld. By a letter dated 6 February 1998 received on 16 February 1998, he was informed that pursuant to a board of director's meeting on 11

August 1997, his benefits were restricted pending the outcome of police investigations, to use of company car without driver, maintenance upon approval only, petrol to maximum RM300, monthly fees to a golf club and house and mobile telephone charges to a maximum of RM250, and entertainment allowance; and which were to be reviewed pending outcome of the police investigations or three months, whichever is the earlier.

[5] Since 1 August 1997 arrangement was for the plaintiff to take leave of absence with full pay and benefits until an independent inquiry and/or police investigation is completed was with his verbal consent, a contract came into existence to maintain that position and cannot be altered unilaterally by either party. The plaintiff is bound to take and stay on leave of absence. The defendant is bound to maintain the terms and conditions agreed upon, on full salary and benefits.

[6] Subsequently, by a letter dated 20 February 1998, the defendant informed the plaintiff that he was dismissed. By a letter 7 March 1998, the plaintiff disputed his dismissal and demanded reinstatement and restoration of benefits. The defendant's reply dated 10 March 1998 reiterated that the plaintiff had been dismissed as CEO.

[7] The plaintiff had previously filed a petition under s. 181 of the Companies Act 1965 against, amongst others, the defendant. On 28 February 2002, the parties entered into a consent judgment which provided that the plaintiff shall have no further or other claims save and except for the enforcement of the consent judgment and the plaintiff's claim for damages in respect of the alleged wrongful dismissal as CEO. This action seeking damages for wrongful dismissal was filed on 8 November 2002.

[8] The first question is whether the plaintiff is estopped from filing this action in view of the consent judgment of 28 February 2002.

[9] In view of the specific reservation of the right to sue for damages for wrongful dismissal in cl. 4(b) of the consent judgment, the plaintiff is not estopped from commencing this action. The consent judgment referred to "damages" for alleged wrongful dismissal is not confined to general damages and does not, therefore, exclude special damages.

[10] The second question is whether the plaintiff is obliged to make a complaint under s. 20 of the Industrial Relations Act 1967.

[11] When a worker feels he has been dismissed without just cause, s. 20 provides that he may make representations in writing to the Director General. The Federal Court in *Fung Keong Rubber Manufacturing (M) Sdn Bhd v. Lee Eng Kiat & Ors* [1981] 1 MLJ 238 held that "may" refers to the statutorily available remedy of reinstatement. Since s. 20 is, as held by *Fung Keong* is an alternative remedy, it does not operate as in *Manggai v. Government of Sarawak* [1970] 2 MLJ 41, to restrict and require the plaintiff to proceed only under s. 20. The plaintiff is not required to have first made representations in writing to the Director General, and since there is no obligation, the plaintiff is not in any way restricted from filing this civil suit.

[12] The plaintiff had claimed:

(a) Special damages from dismissal from February 1998 until October 2002 of RM1,232,160;

(b) General damages;

(c) Interest;

(d) Further and other relief as court thinks fit.

[13] On 21 March 2006, this court gave judgment for the plaintiff as prayed, with damages equivalent to six months salary, interest at the rate of 8% from the date of this action to full judgment.

[14] The circumstances of the dismissal is particularly messy. An appointment as a director of a company, to exercise the powers of a director of a company, may be terminated by the shareholders at any time. This was not done. Further, instead of acting under the cl. 3 of the letter of appointment dated 3 September 1986 to give three months notice of termination, the defendant took the course of purporting to accept a letter of resignation purportedly by the plaintiff, who lodged a report with the police on 24 July 1997. In a meeting on 1 August 1997, a resolution was passed that the plaintiff with his verbal consent take leave of absence as Chief Operating Officer and Director with full pay and benefits until an independent inquiry and/or police

investigation is completed. No independent inquiry was held and there is no evidence before the court of an outcome of police investigation showing that the letter of resignation was in fact signed by the plaintiff. Even so, this agreement was reneged upon to the extent certain restrictions were subsequently imposed. Then, only by a letter dated 20 February 1998, the plaintiff was informed he was dismissed. This dismissal was disputed by the plaintiff who, by his letter of 7 March 1999, demanded reinstatement and restoration of benefits. This was rejected by the defendant's letter of 10 March 1998. He did not accept it.

[15] Although the defendant could, under the terms of the letter of appointment, have terminated the plaintiff's appointment by giving three months' notice, by 1 August 1997 there was a further term agreed between the parties with the effect of in part superceding cl. 3 of the letter of appointment, in that he would remain as Chief Operating Officer and Director, *albeit* on leave of absence, until an independent inquiry and/or police investigation was completed. The first alternative was fully within the control of the defendant who, however, did not take any action. Police investigation was outside the control of either party.

[16] The result was that the plaintiff clearly remained as Chief Operating Officer and Director until the consent judgment of 28 February 2002, which left open and preserved the right of the plaintiff to claim damages in respect of alleged wrongful dismissal.

[17] The court holds that termination of his employment came into effect when he accepted the termination by filing this civil suit in November 2002. For simplicity the termination is deemed to have been accepted at the end of October 2002.

[18] Similar alternative employment in this category would not be easy to seek. Nevertheless, the court is of the view that six months would be a reasonable period from the time he accepted the termination.

[19] For these reasons, the court granted judgment for the plaintiff as prayed with damages equivalent to six months salary.